

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE: ISLAM AL-DIN ALLAH

DEATH PENALTY CASE,

APPELLANT,

DIRECT APPEAL NO. 93-1433

v.

STATE OF OHIO,

APPELLEE.

FILED  
JUL 05 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

REQUESTS FOR ADMISSIONS

IN RE 60(S) MOTIONS FILED  
AUGUST 31, AND OCTOBER 11, 2012,  
RESPECTIVELY.

RECEIVED  
JUL 05 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

*Islam Al-Din Allah*  
*6000 DR 3300*  
*7600 5500*  
*Cincinnati, Ohio 45601*

RECEIVED  
JUN 20 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

*9/2/13*

REQUEST		FOR		ADMISSIONS:
PROPOUNDING	PARTY:	ISLAM	AL-DIN	ALLAH
RESPONDING	PARTY:	STATE	OF	OHIO
SET	NO.	1.	OF	1.

Islam al-Din Allah requests that you admit all of the following matters for purposes of this action. Under the provisions of Rule 36 of the Ohio Rules of Civil Procedure, you are required to respond to these Requests for Admissions, in writing, within 28 days of the service of these Requests. Your response must be signed as required by Rule 26(g) of the Ohio Rules of Civil Procedure. If you fail to respond to these Requests for Admissions within the time allowed, every matter set forth in these requests may be deemed admitted and conclusively established against you for purposes of this action.

Requests.

ADMIT THAT:

REQUEST NO. 1. THE ABSENCE OF A CLERK'S (OR OTHER AUTHORIZED PERSON'S) SIGNATURE ON A PURPORTED CRIMINAL COMPLAINT DEPRIVES A MUNICIPAL COURT OF JURISDICTION TO ISSUE CRIMINAL PROCESS INCLUDING WARRANTS BECAUSE A PROBABLE CAUSE DETERMINATION HAS NOT BEEN MADE ACCORDING TO CLEARLY ESTABLISHED DUE PROCESS PRINCIPLES. WHITELEY v. WARDEN, 401 U.S. 560; GIORDENELLO v. UNITED STATES, 357 U.S. 480.

REQUEST NO. 2. IN THE ABSENCE OF A VALID (SIGNED, AUTHORIZED) CRIMINAL COMPLAINT, THE APPELLANT WAS DEPRIVED OF DUE PROCESS GUARANTEES UNDER THE FOURTH AND FOURTEENTH AMENDMENTS, AND THE PURPORTED WARRANT FOR AGGRAVATED ROBBERY WAS INVALID DUE TO THIS VIOLATION.

REQUEST NO. 3. POLICE ACTING WITHOUT VALID COMPLAINT/WARRANT DID NOT HAVE THE CONSTITUTIONAL AUTHORITY TO SEARCH OR SEIZE APPELLANT'S PERSON WHERE NO CRIMINAL COMPLAINT WAS FILED OR SUBMITTED TO ANY PERSON AUTHORIZED TO ISSUE LEGAL PROCESS.

REQUEST NO. 4. THE PURPORTED INDICTMENT FOR AGGRAVATED MURDER DOES NOT STATE ANY ELEMENTS OF AGGRAVATED ROBBERY.

REQUEST NO. 5. WHEN THE TRIAL COURT RULED THAT ERROR (I.E. DOUBLE JEOPARDY) COULD BE BUILT IN THE TRIAL BECAUSE THE JURY HAD BEEN SWORN IN, REGARDING COUNSEL OF CHOICE'S MOTION TO APPEAR AS COUNSEL, THAT RULING WAS CONTRARY TO UNITED STATES V. SCOTT, 473 U.S. 82 (1978); THE SWEARING IN OF THOSE JURORS HAD NO IMPLICATIONS FOR DOUBLE JEOPARDY CLAUSE.

REQUEST NO. 6. THE AGGRAVATED ROBBERY CHARGES WERE DISMISSED, UPON MOTION OF ASHTABULA COUNTY PROSECUTOR, *NOLLE PROSEQUI*, JUNE 9TH 1998.

REQUEST NO. 7. *NOLLE PROSEQUI* MEANS: I WILL NOT PROSECUTE.

REQUEST NO. 8. APPELLANT WAS SENTENCED BY FINAL APPEALABLE ORDER TO DEATH (AND THREE YEARS FOR GUN POSSESSION) ON JUNE 11TH, 1998.

REQUEST NO. 9. THERE WERE NO INSTRUCTIONS TO THE JURY REGARDING AGGRAVATED ROBBERY IN APPELLANT'S "AGGRAVATED MURDER TRIAL" UPON WHICH A JURY COULD FIND HIM GUILTY OF AGGRAVATED MURDER FOR THE PURPOSE OF ESCAPING... AGGRAVATED ROBBERY.

REQUEST NO. 10. SINCE NO ELEMENTS OF AGGRAVATED ROBBERY WERE ALLEGED IN PURPORTED INDICTMENT FOR AGGRAVATED MURDER, NO INSTRUCTION WAS GIVEN AS TO THAT OFFENSE, NOR WERE EACH AND EVERY ELEMENT PROVEN, OR ATTEMPTED TO BE PROVEN, BEYOND A REASONABLE DOUBT, STRUCTURAL ERROR OCCURRED IN THIS CASE, IN VIOLATION OF APPRENDI V. NEW JERSEY AND SULLIVAN V. LOUISIANA.

REQUEST NO. 11. THE FACT THAT THE PURPORTED INDICTMENT FOR AGGRAVATED MURDER FAILED TO ALLEGE ANY ELEMENTS OF AGGRAVATED ROBBERY [AND THE FACTS THAT THAT CHARGE WAS INDICTED SEPARATELY, ASSIGNED TO A SEPARATE JUDGE, SET FOR TRIAL SEPARATELY, AND DISMISSED, *NOLLE PROSEQUI*, SEPARATELY] DEPRIVED THE TRIAL COURT OF SUBJECT-MATTER JURISDICTION AS TO THOSE ELEMENTS OF AGGRAVATED MURDER.

REQUEST NO. 12. OHIO LAW DICTATES THAT FOR AN OFFENSE LISTED UNDER R.C. 2929.04 (A)(3) TO ELEVATE THE PENALTY OF AGGRAVATED MURDER FROM A LIFE SENTENCE TO A DEATH SENTENCE, IT MUST BE CHARGED IN THE INDICTMENT, PROVEN BEYOND A REASONABLE DOUBT, AND SUBMITTED TO THE JURY; AND THAT DID NOT HAPPEN IN THIS CASE.

REQUEST NO. 13. AGGRAVATED ROBBERY IS A DISTINCT AND SEPARATE OFFENSE FROM ROBBERY; I.E., AGGRAVATED ROBBERY IS DIFFERENT FROM ROBBERY AS A MATTER OF FACT AND LAW, RESPECTIVELY. (STATE V. MERRIWEATHER (1980), 64 OHIO ST. 2d 57)

REQUEST NO. 14. SINCE AGGRAVATED ROBBERY, AN ELEMENT OF THE OFFENSE, WAS NOT SUBMITTED TO THE JURY (I.E. NO INSTRUCTION WAS GIVEN AND JURIES CAN ONLY RECEIVE THE LAW FROM THE COURT), THE STATE DID NOT PROVE THAT A MURDER WAS COMMITTED FOR THE PURPOSE OF ESCAPING DETECTION, APPREHENSION, TRIAL OR PUNISHMENT FOR AGGRAVATED ROBBERY; AND THE RESULT WAS A DIRECTED VERDICT FOR THE STATE OF OHIO.

REQUEST NO. 15. SINCE THE STATE PRESENTED NO VICTIM OR WITNESSES TO ANY AGGRAVATED ROBBERY, THERE IS INSUFFICIENT EVIDENCE TO ESTABLISH ALL OF THE ELEMENTS OF THAT OFFENSE.

REQUEST NO. 16. SINCE THE ELEMENTS OF AGGRAVATED ROBBERY WERE NOT SUBMITTED TO THE JURY, IT COULD NOT HAVE FOUND, AS A MATTER OF FACT AND LAW, THAT A MURDER WAS COMMITTED FOR THE PURPOSE OF ESCAPING DETECTION, APPREHENSION, TRIAL, OR PUNISHMENT OF ANOTHER OFFENSE, TO WIT; AGGRAVATED ROBBERY; I.E., A VERDICT WAS DIRECTED ON THE ELEMENTS OF PRIOR CALCULATION AND DESIGN.

REQUEST NO. 17. SINCE THERE WAS NO VALID WARRANT DUE TO AN INVALID /NOT FILED CRIMINAL COMPLAINT, FAILURE OF THE "INDICTMENT" TO ALLEGE AN OFFENSE OF AGGRAVATED ROBBERY, AND THE FAILURE OF THE TRIAL COURT TO INSTRUCT THE JURY THEREON, THE PREMISES UPON WHICH APPELLANT IS PURPORTEDLY CONVICTED OF AGGRAVATED MURDER WITH PRIOR CALCULATION AND DESIGN DO NOT EXIST AS A MATTER OF LAW AND FACT, RESPECTIVELY.

REQUEST NO. 18. THE ASHTABULA POLICE DEPARTMENT AND WILLIAM D. GLOVER JR. WERE ENGAGED IN AN ILLEGAL, UNREASONABLE SEARCH AND SEIZURE AGAINST APPELLANT ON NOVEMBER 17TH, 1997 DUE TO THE FACT THAT THEY FAILED TO SUBMIT A CRIMINAL COMPLAINT TO ANYONE FOR AUTHORIZATION TO OBTAIN A WARRANT FOR APPELLANT'S ARREST PRIOR TO THAT DATE.

REQUEST NO. 19. ISAAC COLEMAN TOLD POLICE HE WOULD NOT TESTIFY IN ANY PROSECUTION REGARDING ANY ROBBERY.

REQUEST NO. 20. ON NOVEMBER 17TH, 1997, THE STATE OF OHIO KNEW TERESA TAYLOR REPEATEDLY IDENTIFIED MR. GLOVER'S KILLER AS WEARING A PREDOMINANTLY TAN COAT.

REQUEST NO. 21. THE STATE KNEW APPELLANT WAS NOT WEARING A TAN COAT ON NOVEMBER 17TH, 1997.

REQUEST NO. 22. THE STATE KNEW ANTHONY BARKSDALE WAS WEARING A PREDOMINANTLY TAN COAT ON NOVEMBER 17TH, 1997.

REQUEST NO. 23. THE STATE KNEW APPELLANT WAS WEARING A GREEN GREEN BAY PACKERS COAT ON NOVEMBER 17TH, 1997.

REQUEST NO. 24. THE STATE KNEW TERESA TAYLOR, ON NOVEMBER 17TH, 1997, CLEARED THE APPELLANT FROM INVOLVEMENT IN THE SHOOTING WHEN SHE SAID THE PERSON IN THE GREEN COAT LEFT BEFORE THE SHOOTING AND DID NOT RETURN, PGS 3-4, 18-19, 43-44.

REQUEST NO. 25. THE STATE SHOWED PHOTOGRAPHIC DISPLAYS TO TAYLOR AFTER NOVEMBER 17TH, 1997 IN PREPARING HER TO TESTIFY.

REQUEST NO. 26. THE STATE HAS INFORMATION REGARDING THESE DISPLAYS WHICH THEY HAVE NOT TURNED OVER TO THE APPELLANT; PRODUCE SUCH INFORMATION FOR APPELLANT TO INSPECT.

REQUEST NO. 27. THE STATE, THEREFORE, KNEW THAT TAYLOR WOULD, AND DID LIE ON THE STAND WHEN SHE CLAIMED THE PERSON SHE SAW SHOOT MR. GLOVER WAS WEARING A GREEN COAT WITH A BIG "G" ON THE BACK.

REQUEST NO. 28. THE STATE KNEW TERESA TAYLOR SAID THE SHOOTER AND THE GUY IN THE DALLAS COWBOY COAT WERE IN HER YARD, AND THAT ANTHONY BARKSDALE AND JIMMIE RUTH ADMITTED TO BEING THE TWO PERSONS IN HER YARD, AND THAT APPELLANT WAS NEVER THERE.

REQUEST NO. 29. IN CLOSING ARGUMENTS WHEN THE STATE SAID TAYLOR HAD NEVER IDENTIFIED ANYONE ELSE AS THE KILLER,

Tr. 3036: No one, no one has pointed the finger at anybody other than Odraye Jones;

Tr. 3037-3038: One thing she wasn't confused about and one thing she was consistent about is... the green jacket with the big "G" on the back. And she saw the person wearing that jacket pull out a gun and fired four times as he walked towards Officer Glover... No question in her mind it was a green jacket. She never wavered on that point... her recollection with respect to that green jacket is unwavering;

Tr. 3084-3085: What was she consistent about from day one, never wavered? That the guy in the Green Bay Packers jacket is the one that killed Officer Glover, is the one that shot officer Glover and kept walking toward him as he was shooting, that the guy in the Green Bay Packers jacket is the one that kicked Officer Glover when he was down. Theresa never wavered on that; **THE STATE KNEW THOSE WERE MATERIAL MISREPRESENTATIONS OF FACT.**

REQUEST NO. 30. WHEN THE STATE SAID ON APPEAL: P.14 OF MEMORANDUM IN RESPONSE TO JURISDICTION," OHIO SUPREME COURT CASE NO. 03-0205; The state submits that the alleged "inconsistencies" between Teresa Taylor's statement to police and her direct testimony were not "inconsistencies" at all. Appellant argues that in her statement to police, Teresa described the shooter as wearing a "tan and green" jacket, yet at trial, testified the shooter was wearing a "green coat that had a 'G' on the back of it." The state submits that Theresa was in fact describing the same coat in both instances (Thomas Sartini, Ariana Tarighati; Ashtabula County prosecutors), **THOSE WERE MATERIAL MISREPRESENTATIONS OF FACT.**

REQUEST NO. 31. THE LEAD DETECTIVE, JEFF BROWN, CHARACTERIZED THE COATS AS: [ODRAYE] JONES GREEN BAY JACKET WITH LARGE "G" ON BACK; [JIMMIE] RUTH: BLUE/WHITE/GRAY DALLAS JACKET; [ANTHONY] BARKSDALE: TAN/BLACK FULL LENGTH JACKET; IN HIS INVESTIGATIVE NARRATIVE, AT PG. 9.

REQUEST NO. 32. THE STATE KNEW TERESA TAYLOR DESCRIBED THE SHOOTING AS A REACTION TO MR. GLOVER REACHING FOR HIS GUN; "It's-- the way it looked when he put his hand back, it looked like he was reaching for his gun and that's when the first shot came, the shooter, in the tan and green coat, probably thought he was going to pull his gun out and just shoot him right there..." Taylor's statement, Pg. 19, 20. OF NOVEMBER 17TH, 1997 STATEMENT.

REQUEST NO. 33. THE STATE HAS NO EVIDENCE THAT NEGATES OR DISPROVES THIS ASPECT OF TAYLOR'S ACCOUNT OF HOW THE SHOOTING HAPPENED, THUS, THIS DESCRIPTION OF THE SHOOTING NEGATES THE STATE'S THEORY OF AGGRAVATED MURDER WITH PRIOR CALCULATION AND DESIGN.

#### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the attached Requests for Admissions, ~~together with all attachments and exhibits,~~ was sent by first-class U.S. mail (in a properly addressed envelope with first class postage duly paid) on Jan 10<sup>th</sup> 2013 to the attorneys of record for the state of Ohio at the address listed below:

Thomas J. Martin  
25 W. Jefferson St.  
Jefferson, Ohio 44047